(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 166 /2004

Appellant	:	Pekhan Ram,
Accused		S/o Santu Ram Chandrakar
(In jail)		aged about 22 years,
		Occupation - Cultivation,
		R/o village Banshapur,
		O.P. Khandsara, P.S. Bemetara,
		Tah. Bemetara, Distt. Durg (C.G.)

7/00/04

Filed on 13/02/09
by Shri Sadhu Verma
Advocate

R 13/02/09

VERSUS

Respondent	:	State of Chhattisgarh,
Prosecution		Through Police Station Bemetara,
		Distt. Durg (C.G.)

MEMORANDUM OF APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.166/2004

Before : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Pekhan Ram

Vs.

State of Chhattisgarh

Present:-

Shri Sudhir Verma, learned Counsel for the appellant.
Shri M.P.S.Bhatia, Panel Lawyer for the State.

ORAL JUDGMENT
(Delivered on 17.08.2006)

This appeal is directed against the judgment dated 06-02-2006 delivered by Special Judge & Additional Sessions Judge, Durg in Special Case Number-95/2003 whereby the appellant was convicted under Section-376 of the IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo additional simple imprisonment for 6 months.

2. Briefly stated the prosecution story is that on 12-12-2002 the appellant herein kidnapped the prosecutrix, a girl aged less than 16 years from the lawful custody of her parents with intent to subject her to illicit sexual intercourse and thereafter repeatedly subjected the prosecutrix to forcible sexual intercourse and thereby committed rape on her.

3. Shri Sudhir Verma, learned counsel for the appellant has at the very outset submitted that he does not assail the finding recorded by the

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learned trial Judge that the appellant had committed sexual intercourse with the prosecutrix on 13-12-2002 and even thereafter but would assail the impugned judgment only on the ground that on the date of commission of the alleged offence, the age of the prosecutrix was above 16 years. It was contended that the evidence led by the prosecution revealed that the sexual intercourse committed by the appellant with the prosecutrix was wholly with her consent. Learned counsel for the appellant has argued that the school admission register Ex.P-14-A shows that the date of birth of the prosecutrix is 20-01-1987 whereas Kotwar Salik Ram PW-18 has proved the entry in the birth Register Ex.P-26 which shows the date of birth of the prosecutrix as 24-07-1987. It was also urged that Dr. Smt. S. Sawant PW-15 had estimated the age of the prosecutrix as 18 years. Lastly in the alternative, it was urged by learned counsel for the appellant that since the appellant was in jail since 11-08-2003 and had undergone incarceration for a period of over 3 years, the sentence awarded by the learned trial Judge should be reduced to the sentence already undergone. On the other hand, Shri M.P.S.Bhatia, learned Panel Lawyer for the State argued in support of the impugned judgment.

4. In view of the submission made above by learned counsel for the appellant, the following points alone require consideration in this appeal:-

(A) Whether on the date of offence, the age of the prosecutrix was more than 16 years?

(B) If yes, whether sexual intercourse committed by the appellant with the prosecutrix was with her consent?

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5. Having heard rival submissions, I have perused the record with utmost circumspection. As regards the proof of date of birth of the prosecutrix, the prosecution has produced and proved the primary evidence i.e. entry in the Kotwari Register by not only examining the informant Manglu PW-17 who is the grandfather of the prosecutrix but also the Kotwar Salik Ram PW-18. Their wholly unrebutted testimony proves beyond doubt that Manglu PW-17 had got the date of birth entered in the Kotwari Register Ex.P-26 as 24-07-1987. So far as the entry in the school admission register Ex.P-14-A is concerned, Bhaktu Das PW-6 has clearly stated that his brother Sushil had taken the prosecutrix for getting her admitted in Semaria School which explains the contradiction in the date of birth i.e. 20-01-1987 mentioned in the School Admission Register. However, even if the date of birth i.e. 20-01-1987 is taken into consideration, the age of the prosecutrix on the date of alleged offence is clearly below 16 years.

6. I have perused the birth certificate Ex.P-26-A proved by Kotwar Salik Ram PW-18 and also the evidence of Manglu PW-17. I am of the considered opinion that the testimony of Manglu PW-17 as also the Kotwar Salik Ram PW-18 relating to the date of birth of the prosecutrix being 24-07-1987 is wholly unrebutted and worthy of credence. The entry in the School Admission Register Ex.P-14-A also shows that the prosecutrix was studying in Class-VIIth when she left the school on 31-07-2002. This also shows that the prosecutrix was below 16 years of age on the date of occurrence i.e. 13-12-2002. The testimony of Bhaktu Ram PW-6 also establishes that the prosecutrix was aged less than 16 years on the date of occurrence. The learned trial Judge also estimated the age of the prosecutrix as 13 years on the date of her evidence.

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7. The contention of learned counsel for the appellant that the prosecutrix had admitted before Dr. Smt. S. Sawant PW-15 that she attained the age of puberty, five years prior to her medical examination is not sufficient to discard the testimony of the aforesaid witnesses as also the primary evidence relating to date of birth of the prosecutrix. So far as the opinion of Dr.Smt. S. Sawant PW-15 is concerned, it is a mere estimation of age and does not discard the primary evidence relating to proof of the date of birth of the prosecutrix. In this view of the matter, I am of the considered opinion that it is established that the age of the prosecutrix on the date of offence was less than 16 years.

8. In this view of the matter, the findings recorded by the learned trial Judge regarding the age of the prosecutrix on the date of occurrence being less than 16 years is wholly justified and does not call for any interference. As a result, the second limb of the argument of learned counsel for the appellant that sexual intercourse was committed by the appellant with the prosecutrix with her consent also fails. Since the findings recorded by the learned trial Judge that the appellant had committed sexual intercourse with the prosecutrix is not under challenge, the fact that the prosecutrix was aged less than 16 years on the date of offence her consent in the sexual act would be wholly immaterial. Thus, the evidence led by the prosecution clearly brings home the guilt of the appellant under Section-376 of IPC beyond doubt.

9. Having thus considered the rival submissions and after perusing the record with circumspection, I am of the considered opinion that conviction of the appellant under Section-376 of the IPC is well founded and dose not call for any interference.

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10. The argument for reduction of sentence awarded to the appellant, to already undergone is also liable for outright rejection. In view of the fact that the appellant had repeatedly committed rape on the prosecutrix, a girl aged below 16 years and the facts and circumstances of the case, the sentence awarded by the learned trial Judge being minimum prescribed for the offence under Section-376(1) of the IPC, no interference is called for in the sentence awarded by the learned trial Judge.

11. For the aforesaid reasons, this appeal being devoid of merit is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge